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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,452	04/12/2001	Randall Allen Vogel	AD6728 US NA	3330
23906 7590 10/11/2007 E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			EXAMINER JACKSON, MONIQUE R	
			ART UNIT 1794	PAPER NUMBER
			NOTIFICATION DATE 10/11/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-Legal.PRC@usa.dupont.com

Office Action Summary

Application No.

09/833,452

Applicant(s)

VOGEL ET AL.

Examiner

Monique R. Jackson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6,43,54,55,57-60,66-72,83 and 84 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6,43,54,55,57-60,66-72,83 and 84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendment filed 7/13/07 has been entered. Claims 1, 3, 6, 43, 54, 55, 57-60, 66-72, 83 and 84 are pending in the application. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

2. Claims 69-72 are rejected under 35 U.S.C. 102(e) as being anticipated by Smith et al (USPN 6,319,438) for the reasons recited in the prior office action and restated below, wherein the Examiner takes the position that a DOI of at least 80 would have been clearly envisaged by the teachings of Smith et al given that a range of at least 60 to a maximum of 100 is clearly envisaged.

As previously discussed, Smith et al teach an extruded automotive trim and a method of making the trim wherein a multilayer sheet is coextruded to include at least one color pigmented or metallizing particle layer and a top clear coat layer wherein the multilayer sheet may further include tie layer(s) which may be clear or include color pigment and/or metallizing particles and the clear coat layer may include multiple layers; wherein as taught in an example, the layers may be formed of ionomeric resins as instantly claimed and wherein the sheet is laminated to a substrate which may be provided with coloring (Abstract; Figures; Col. 7-10; Col. 14, line 47-Col. 15, line 34; Col. 16, line 49-Col. 18, line 16.) Smith et al also teach that the sheet is thermoformable, that the substrate may be various polymers, that each of the trim products has a finished surface with a distinctness of image (DOI) of at least about 60 units, where 100 is the maximum DOI reading, and a gloss of at least about 60-65 at an angle of 20°; wherein Smith et al teach that the gloss and DOI of the final trim part can be increased or improved by polishing

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or plating working mold surfaces since the final product may come directly from the mold apparatus (Col. 11-12; Col. 17; Col. 19, lines 45-65; Col. 8, lines 55-67.) Smith et al further teach thickness ranges that read upon the claimed film and first coextruded layer ranges (Col. 9; Col. 17, lines 22-Col. 18, line 16.)

Claim Rejections - 35 USC § 103

3. Claims 1, 3, 6, 43, 54, 55, 57-63, 65-68, 83, and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 04345828 (JP'828) for the reasons recited in the prior office action and restated below.

JP'828 teaches a multilayer, co-extruded ionomer film comprising at least three layers including a first outer layer 1 selected from EVA, VLDPE, or mixture thereof; a core or a layer 2 of ionomer or a blend thereof with EVA, EMAA or EAA; and a second outer layer 3 selected from a group of EMAA, EAA and ionomers; wherein before stretching the film has a total thickness of about 400 to about 820 microns, with the second outer layer having a thickness of about 75 to about 155 microns (reads upon claimed about 8mils to about 60 mils; Abstract; Figure 2; paragraph 0023.) The core or internal layer is preferably about 200 to about 410 microns (Paragraph 0024) and the first outside layer is about 125 to about 255 microns (Paragraph 0025.) JP'828 provides an example, Structure No. 1, which includes a 90 micron sodium ionomer outer layer c, a 235 micron sodium ionomer core layer b, and a 145 micron VLDPE/EVA blend outer layer a (*also reads upon substrate of Claim 43*) for a total film thickness of 470 microns or about 18.5 mils or about 12.8 mils for the two ionomer layers only (Table 1.)

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JP'828 does not teach that the film or one or more layers comprise an additive as instantly claimed however one having ordinary skill in the art at the time of the invention would have been motivated to utilize any of the claimed conventional additives, particularly a pigment to provide a desired color or property based on the desired end use of the final product. Further one having ordinary skill in the art at the time of the invention would have been motivated to determine the optimum thickness for each layer to provides the desired multilayer film for a particular end use.

4. Claims 1, 3, 6, 43, 54, 55, 57-63, 66-68, 83, and 84 are rejected under 35 U.S.C. 103(a) as being upatentable over Flieger (USPN 5,789,048) for the reasons recited in the prior office action and restated below, wherein the Examiner notes that though Flieger teach that typically a film thickness of 70-125 microns should be adequate for 25 kg bags of polymers and elastomers, the thickness of the film depends upon the size and weight of the package (Col. 2, lines 61-65.) Hence, one having ordinary skill in the art at the time of the invention would have been motivated to utilize thicker films for packages heavier than 25 kg and further to utilize routine experimentation to determine the optimum layer thickness for each layer of the film.

Flieger teaches a film made from a random ionomer copolymer comprising 55-90% by weight ethylene and 10-45% by weight of an unsaturated monocarboxylic acid having 3-8 carbon atoms, preferably acrylic acid or methacrylic acid, the copolymer being neutralized from 0-40% with a metal ion such as lithium, sodium, magnesium, or zinc (Abstract; Col. 2, lines 41-53.) Flieger teaches that the film may be formed by any procedure known in the art including flat film extrusion and blown film extrusion and typically has a thickness of 70-125 microns, wherein the film may be formed of several coextruded layers, each layer providing different

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properties (Col. 2, lines 58-67.) Flieger specifically teaches that the film may be formed by a black inner layer for ultraviolet light protection, a white middle layer for appearance, and a clear outer layer for printability and tackiness wherein Flieger includes an example comprising a multilayer film formed from an ionomer copolymer comprising 80% ethylene and 20% methacrylic acid neutralized 35% with sodium ions, coextruded to form a 120 micron bag comprising a black pigmented inner layer 40 microns thick, a white pigmented middle layer 40 microns thick and a transparent outer layer 20 microns thick (Col. 3, lines 1-5; Ex. 2.) With regards to the flow properties and optical properties as instantly claimed, considering the multilayer film taught by Flieger is produced by coextrusion to form a unitary film, the Examiner takes the position that "the flow properties" of the layers are "matched" as instantly claimed.

Response to Arguments

5. Applicant's declaration and arguments filed 7/13/07 have been fully considered but are not persuasive. With respect to Smith et al, the Applicant argues that Smith does not teach a DOI of at least 80 as instantly claimed. However, as discussed above, the Examiner takes the position that the teachings of Smith et al clearly envisage a range from at least 60 to the maximum DOI reading of 100 given the wording in Smith et al, and hence would read upon the claimed invention. With respect to JP'828, the Applicant argues that JP'828 teaches a heat shrinkable film not a thermoformable film. However, the Examiner notes that the film taught by JP'828 is **capable** of being thermoformed and given that the claims are not directed to the thermoformed article, the invention taught by JP'828 reads upon the claimed invention. The Applicant further argues that JP'828 does not suggest an additive, however, the Examiner notes that the Applicant is only stating the difference between the instant invention and JP'828 and has

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not provided any arguments to rebut the Examiner's position that the claimed additives are obvious other than the fact that JP'828 is directed to see-through films, wherein the Examiner notes that see-through films can also be provided with non-opaque dyes or pigments to provide a colored see-through film based on the desired end use. With respect to Claim 43 as well as 83-84, the Applicant argues that JP'828 does not teach the film adhered to a substrate, however, the Examiner notes that JP'828 teaches a third polymer layer which reads upon the claimed substrate. With regards to Claims 66-68, the Examiner maintains her position that the flow properties would be exhibited given that the layers are same materials and are coextruded. The Applicant further argues that JP'828 does not teach the DOI or gloss as recited in Claims 69-72 however these claims were not part of the rejection.

With respect to Flieger, the Applicant argue that Flieger only teaches 70-125 microns films for a 25kg bag and that the bag is the only bag taught with no heavier bags being required and no thicker films suggested. The Examiner does not find this argument persuasive given that Flieger et al teach that the packaging film can be used to make a bag or other container, and hence does not limit the invention to a 25kg bag only and in fact suggests that the packaging can vary in thickness based on the intended end use as discussed above. With respect to the Pike declaration filed, the Examiner notes that the Flieger reference is a 102(b) reference and cannot be sworn behind. The Applicant also argues that the inner layer of Flieger is pigmented and not clear, however, Flieger teaches that the outer layer is clear and the disclosed structure would still read upon the claimed invention. In terms of the substrate, as stated above, a third polymer layer would read upon the claimed substrate. In terms of the thickness, the Examiner maintains her position that the thickness is an obvious result-effective variable and one skilled in the art would

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have been motivated to utilize routine experimentation to determine the optimum thickness based on the desired mechanical properties and end use. In terms of the DOI, it is noted that these claims were not part of the rejection. Lastly, as stated above, the Examiner notes that the flow properties would be as claimed given that the materials are the same and are coextruded.

Therefore, the Examiner maintains her position that the cited prior art references read upon the claimed invention.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

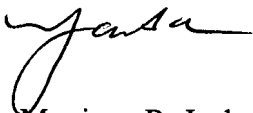
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R. Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on 571-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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October 1, 2007